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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,564	09/17/2001	Ronnie R. Moffitt	D-2695/WOD	7950

7590 12/29/2005

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EXAMINER	
CIRIC, LJILJANA V	

ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/954,564	MOFFITT, RONNIE R.	
	Examiner	Art Unit	
	Ljiljana (Lil) V. Ciric	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 10-37* is/are pending in the application.

4a) Of the above claim(s) *12-23 and 25-29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10,11,24 and 30-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 October 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office action is in response to the reply filed on October 3, 2005.

2. Claims 1 through 8 and 10 through 37 remain in the application. Of these, claims 1 through 8, 10, 11, 24, and 30 through 37 have been amended, either directly or indirectly.

Response to Arguments

3. Applicant's amendments to claim 24 as filed with the reply of October 3, 2005 have overcome the rejection of the claim under 35 U.S.C. 112, second paragraph, as cited in the previous Office action.

Applicant's arguments with respect to the prior art rejections of claims 1 through 8, 10, 11, and 30 through 37 as cited in the previous Office action have been considered but are moot in view of the new ground(s) of rejection as presented below.

Applicant's arguments as filed on October 3, 2005 with regard to the prior art rejection of claim 24 as cited in the previous Office action have been fully considered but they are generally not persuasive and are traversed hereby, as follows.

First of all, the examiner hereby wishes to reiterate for the record that the limitations "a *bathroom exhaust airflow* path", "an *outside airflow* path", and "a *return airflow* path" are interpreted as being equivalents of the limitations "a path for exhaust air flow", "a path for outside air flow", and "a path for return air flow", with the term "path" being assigned its common meaning of "route", for example; nothing associated with the common meaning of the term "path" precludes the various air flow paths or routes from being co-located in a single structural conduit at some point. Note that reciting a "path" is broader than reciting a "conduit" or a "duct" for air flow; a "path" for an air flow does NOT necessarily include a corresponding duct or a conduit structure because, as long as distinct air flows are created and exist, these air flows can circulate via separate paths within a single space (such as within a room)

WITHOUT the benefit of conduits or ducts or pipes existing throughout the room to guide these air flows. Analogously, various ocean currents circulate via various corresponding paths through the waters of an ocean, and no one would automatically associate pipelines or similar structures when ocean current *paths* are mentioned.

The examiner also reiterates that the claims in a pending application should be given their *broadest* reasonable interpretation. See In re Pearson, 181 USPQ 641 (CCPA 1974).

Applicant's arguments with regard to the supposed non-applicability of the Shibata reference merely state that the Shibata reference fails to disclose the claimed geometry of the inventive system, "including the bathroom, the building interior, the area of safe exhaust, and the area of outdoor air". However, Shibata very clearly discloses both a washroom B and a lavatory C, either of which is readable on the bathroom as recited in the claims, as well as additional rooms A and D which comprise the building interior, and ducts 17 and 18 connected with the outdoors [column 3, lines 24-25], with the outdoors portion of air adjacent to the outlet of exhaust duct 18 being readable on the "area of safe exhaust" as recited in the amended claims and with the outdoor portion of air adjacent to the inlet of inlet duct 17 being readable on the "area of outdoor air" as also recited in the amended claims.

Applicant's arguments thus fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments thus also do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Election/Restriction

4. Claims 12 through 23 and 25 through 29 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the paper mailed on May 6, 2003.

Drawings

5. The replacement drawing for Figure 1 was received on October 3, 2005. This corrected replacement drawing is hereby approved.

Specification

6. The use of the trademarks such as *A Modular Climate Changer* [page 1, line 28] and *Traq* [page 7, lines 18 and 21] has been noted in this application. Trademarks should be **capitalized** wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1 through 8, 10, 11, 24, and 30 through 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "safe" as recited at least in each of base claims 1, 24, 30, and 34 is a relative term which renders the claim indefinite. The term "safe" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be

reasonably apprised of the scope of the invention. Thus, as used to qualify the area of exhaust, this term renders the same indeterminate and the base claims and all claims depending therefrom indefinite.

Claim Rejections - 35 U.S.C. ∋ 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. As best can be understood in view of the indefiniteness of the claims, claims 1 through 8, 10, 24, and 30 through 37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Shibata.*

Shibata discloses a heat recovery arrangement or an energy recovery system essentially as claimed, including, for example: a fan 3 or 5 in ventilator 1 for moving air, with fan 5 being readable on the single exhaust fan as recited in claims 8, 33, and 37; a bathroom exhaust airflow path beginning at bathroom opening 23c in lavatory or bathroom C and going into the housing of ventilator 1 via inlet 9 and then towards an area of "safe" exhaust via exhaust outlet 10 and duct 18; a building exhaust airflow path going from the far right of Figure 1 via duct 22 into the housing of ventilator 1 via inlet 9 and then towards the area of "safe" exhaust via exhaust outlet 10 and duct 18; an outside airflow path going from an area of outdoor air through inlet duct 17 and through fan 3 via inlet 7 [see Figure 2] to the building interior via duct 19; a heat exchanger 6 readable on the means for extracting heat from the combined system exhaust and bathroom exhaust airflow paths b and for transferring the extracted heat to the outside airflow path a; outlet damper 24a being readable on the first modulating device as recited in claim 5 and on the airflow control damper as recited in each of claims 31 and 35, with the disclosed corresponding control device as depicted in Figure 5 being readable on the airflow monitor as recited in each of these claims as well; and, inlet damper 21 being at least broadly readable on the relief damper as recited in each

of claims 6, 32, and 36. Little or no patentable weight is given to the various intended use limitations in the apparatus claims.

The reference thus reads on the claims.

Allowable Subject Matter

11. Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

12. The additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

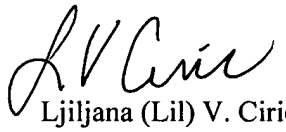
13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric whose telephone number is 571-272-4909. The examiner can normally be reached on Mondays through Fridays from 10:00 a.m. to 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene, can be reached at 571-272-4930.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ljiljana (Lil) V. Ciric
Primary Examiner
Art Unit 3753

Approved.
drc
12-23-05

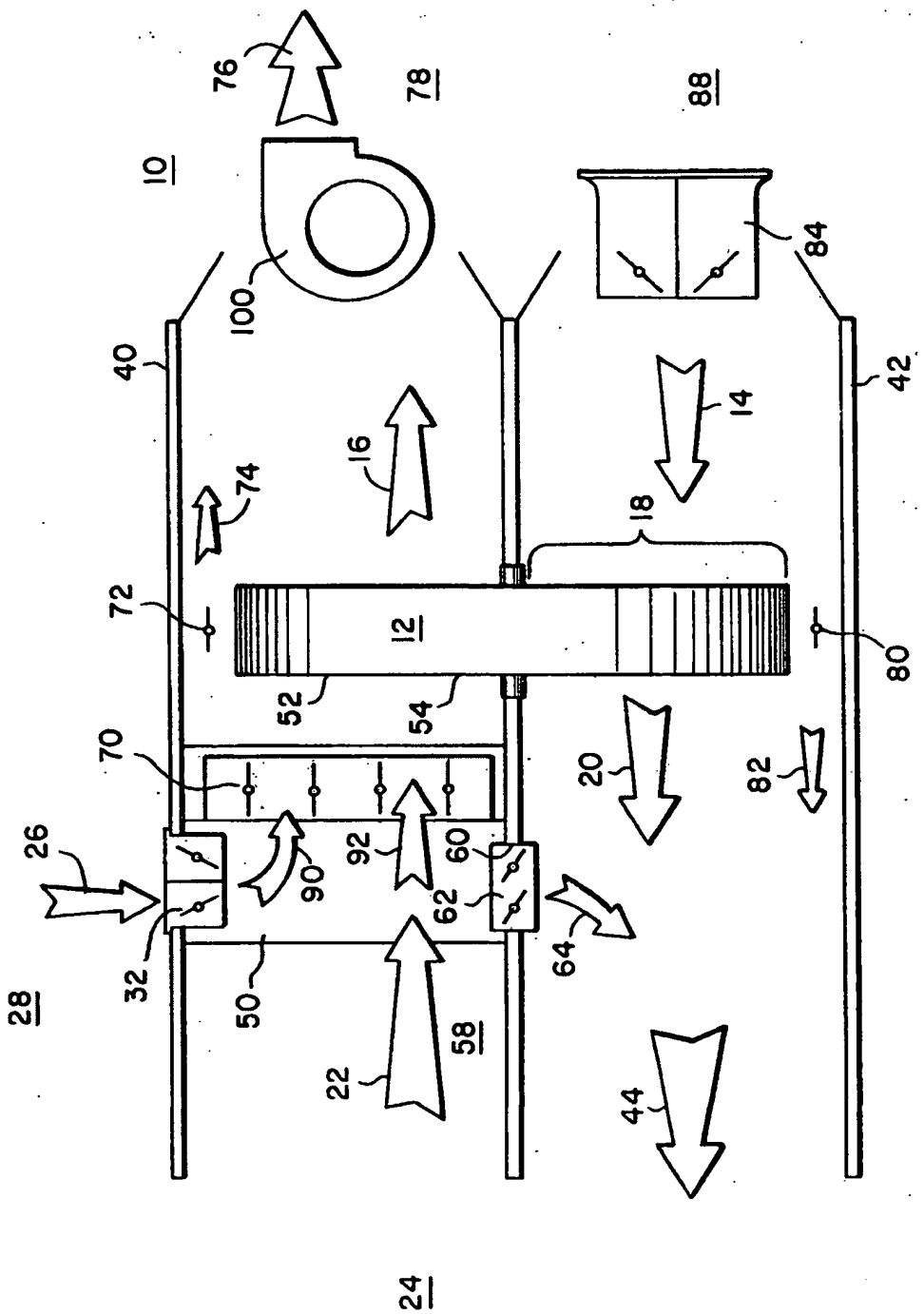


FIG. 1